

Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R3-ES-2015-0033; FF03E00000–FXES11120300000–167]

**Availability of the Draft Midwest Wind Energy Multi-Species Habitat Conservation
Plan and Draft Environmental Impact Statement**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (ESA), announce the availability of the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP). Planning partners include the State conservation agencies from the States of Michigan, Indiana, Wisconsin, Minnesota, Iowa, Illinois, and Missouri, the American Wind Energy Association (AWEA), who is representing a consortium of wind energy companies called WEBAT (Wind Energy Bat Action Team), and The Conservation Fund. The Plan Area encompasses all lands within the States of Illinois, Indiana, Iowa, Michigan, Minnesota,

Missouri, Ohio, and Wisconsin. The covered species include six federally listed bat and bird species, one bat species that may be listed in the future, and the bald eagle. The activities covered under the MSHCP (“covered activities”) include the construction, operation, maintenance, decommissioning and repowering of wind energy facilities, as well as monitoring activities. Up to 18,004 megawatts (MW) of existing facilities and 33,000 MW of new wind development are proposed to be covered under the MSHCP. In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Council on Environmental Quality (CEQ) regulations, the Service is also announcing the availability of the MSHCP draft environmental impact statement (DEIS).

DATES: To ensure consideration, please submit your comments on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Service will host two online webinars during the public comment period. The webinar dates have not been determined at this time. Information on how to participate in the webinars will be provided on the Internet at <http://www.midwestwindenergyhcpeis.org>.

ADDRESSES:

Document Availability:

- *Internet:* You may obtain copies of the documents on the Internet at the Federal eRulemaking Portal at: <http://www.regulations.gov/> (Docket Number FWS-R3-ES-2015-0033) or on the project website, at <http://www.midwestwindenergyhcpeis.org>.

- *In-Person:* Hard copies of the documents will be available for public inspection by appointment, during normal business hours, at the Service's Midwest Regional Office, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.

Comment Submission: In your comment, please specify whether your comment addresses the draft MSHCP, the draft EIS, or both. You may submit written hard-copy comments by U.S. mail or hand-delivery to: Regional Director, Attn: Rick Amidon, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.

FOR FURTHER INFORMATION CONTACT: Rick Amidon, Fish and Wildlife Biologist, Ecological Services, Midwest Regional Office, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458; 612-713-5164. If you use a telecommunications device for the deaf, hard-of-hearing, or speech disabled, please call the Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: We announce the availability of the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP). Planning partners include the State conservation agencies from Michigan, Indiana, Wisconsin, Minnesota, Iowa, Illinois, and Missouri; the American Wind Energy Association, who is representing a consortium of wind energy companies called WEBAT (Wind Energy Bat Action Team); and The Conservation Fund. The plan area encompasses all lands within the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. If

approved, the MSHCP will authorize incidental take of the covered species that may result from wind energy development activities within covered lands over the 45-year term of the MSHCP. Covered species include the Indiana bat, northern long-eared bat, little brown bat, Kirtland's warbler, interior least tern, Great Lakes and Great Plains populations of the piping plover, and the bald eagle. The activities covered under the MSHCP ("covered activities") include the construction, operation, maintenance, decommissioning and repowering of wind energy facilities, as well as monitoring activities. Up to 18,004 megawatts (MW) of existing facilities and 33,000 MW of new wind development are proposed to be covered under the MSHCP.

In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Council on Environmental Quality (CEQ) regulations, the Service is also announcing the availability of the MSHCP draft environmental impact statement (DEIS). If approved, the MSHCP will authorize incidental take of the covered species that may result from wind energy development activities within the covered lands over the 45-year term of the MSHCP. The purpose of the proposed Federal action is to allow the Service to respond to applications for incidental take permits (ITPs) under the MSHCP, which, if granted, will authorize the incidental take of covered species resulting from existing and future wind energy development within covered lands.

The draft MSHCP, which has been prepared by the Service and the planning partners, covers the construction, operation, maintenance, decommissioning and reclamation, and repowering of existing and future land-based commercial wind energy facilities within covered lands, as well as monitoring activities. During the first 5 years, existing commercial wind energy projects may apply for and receive incidental take

authorizations under the MSHCP; proposed commercial wind energy facilities may opt in during the first 15 years of the MSHCP. The plan area encompasses all lands under the jurisdiction of the Midwest Region of the Service, including Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The geographic area where incidental take authorization will be allowed under the MSHCP is a subset of the plan area and specifically excludes lands of particular importance to bat and migratory bird species, as well as a wide range of other wildlife species. These lands, which are referred to as covered lands in the MSHCP and the DEIS, were identified during the 2012 scoping process for the MSHCP.

The draft MSHCP contains a discussion of the following: (1) Introduction; (2) Covered Activities; (3) Affected Environment and Biological Resources; (4) Take Assessment and Impact of Take; (5) Conservation Plan; (6) Alternatives to Take; (7) Monitoring, Adaptive Management, and Reporting; (8) Funding Assurances, Unforeseen and Changed Circumstances and Amendments; and (9) Plan Implementation.

Background

Section 9 of the ESA prohibits “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The term “harm” is defined by regulation as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly

impairing essential behavioral patterns, including breeding, feeding, or sheltering” (50 CFR 17.3). The term “harass” is defined in the regulations as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. “Incidental take” is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Secretary may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

Eagles are protected under the Bald and Golden Eagle Protection Act (BGEPA), which prohibits take and disturbance of individuals and nests. “Take” under the Eagle Act includes any actions that pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, and disturb eagles. “Disturb” is further defined in 50 CFR 22.3 as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” 50 CFR 22.11 allows take authorization to be extended to permittees authorized to take eagles by an ITP issued pursuant to section 10(a)(1)(B) of the ESA. Take coverage for bald eagles provided through an ITP applies for the duration of the permit, or until the amount or level of take authorized has been met, provided the permittee complies with all terms and conditions provided in the ITP.

In 2009, the States of Indiana, Ohio, Michigan, Missouri, and Iowa, on behalf of all eight partner States, submitted a grant proposal to the Service under section 6 of the ESA, proposing to develop a multi-species habitat conservation plan and incidental permitting program for future wind development within the planning area. They envisioned that the MSHCP would be developed as a template HCP, meaning that the Service would issue individual ITPs to future applicants after the MSHCP was approved. They also contemplated one or more of the States would become a master permittee and issue certificates of inclusion (COI); however, at this time none of the States have agreed to serve as the master permittee. As a result, the MSHCP allows for the creation of a not-for-profit entity that would hold a master permit and issue COIs. The entity will be

comprised of a five-person board. Three members of the Board will be held by representatives from wind energy companies and two members will be representatives of conservation and other interests that have experience with wind energy conservation–related issues. The MSHCP also allows for companies to seek individual ITPs.

The MSHCP intends to provide conservation and recovery benefits to federally listed species while streamlining the permitting process for existing and future wind projects where take of listed species is likely to occur. While wind-generated power is a clean and renewable source of energy, wind turbines are known to cause mortality of bats and birds that are struck by or pass near the turning blades. Wildlife mortality may also result from other wind energy facility–related activities (e.g., construction-related activities). While individual wind energy development projects have been addressing endangered species issues by seeking their own facility ITPs under the ESA, a regional solution is desirable to allow for a coordinated conservation effort across large portions of species’ ranges.

The MSHCP provides a detailed conservation plan to ensure the incidental take caused by wind energy development will not appreciably reduce the likelihood of the survival and recovery of the covered species on the covered lands, and provides mitigation to fully offset the impact of the taking. Further, the MSHCP provides a long-term monitoring and adaptive management strategy to ensure that the ITP terms are satisfied, and to account for changed and unforeseen circumstances.

Purpose and Need for Action

In accordance with NEPA, the Service has prepared a DEIS to analyze the impacts to the human environment that would occur if the MSHCP is approved and implemented and ITPs are issued.

Proposed Action

Under the Proposed Action, ITPs will be issued under the MSHCP for the covered activities (e.g. construction, operation, maintenance, decommissioning and reclamation, and repowering of existing and future land-based commercial wind energy facilities within covered lands), as well as monitoring activities. Incidental take coverage will be provided for the covered species; impacts to other federally listed species will either be avoided through siting and best management practices, or addressed through a separate and site-specific ESA section 10(a)(1)(B) permitting process. If impacts to other federally listed species cannot be avoided, and an applicant does not obtain a separate permit for that species, an ITP under the MSHCP will not be issued. The proposed action also includes minimization, monitoring, reporting, and compensatory mitigation requirements as part of the conservation strategy for covered species. Existing wind energy facilities in covered lands (i.e., up to 18,004 MW) and up to 33,000 MW of new wind energy capacity will be considered for incidental take authorization under the proposed action.

We invite comments and suggestions from all interested parties on the draft documents associated with the ITP application (HCP and HCP appendices), and request that comments be as specific as possible.

Alternatives Analyzed in the DEIS

The DEIS contains an analysis of four alternatives: (1) No Action (no permit issuance); (2) Proposed Action (Proposed MSHCP Alternative); (3) Reduced Permit Duration Alternative; (4) Increased Cut-In Speed Alternative. The DEIS considers the direct, indirect, and cumulative effects of the alternatives, including any measures under the Proposed Action alternative intended to minimize and mitigate such impacts. The DEIS also identifies additional alternatives that were considered but were eliminated from consideration as detailed in Section 2.4 of the DEIS.

The Service invites comments and suggestions from all interested parties on the content of the DEIS. In particular, information and comments regarding the following topics are requested:

1. The direct, indirect, or cumulative effects that implementation of any alternative could have on the human environment;
2. Whether or not the impact on various aspects of the human environment has been adequately analyzed; and
3. Any other information pertinent to evaluating the effects of the proposed action on the human environment.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act to review all Federal agencies' environmental impact statements (EISs) and to comment on the adequacy and the acceptability of the environmental impacts of proposed actions in the EISs.

EPA also serves as the repository (EIS database) for EISs prepared by Federal agencies and provides notice of their availability in the **Federal Register**. The EIS Database provides information about EISs prepared by Federal agencies, as well as EPA's comments concerning the EISs. All EISs are filed with EPA, which publishes a notice of availability each Friday in the **Federal Register**.

For more information, see <http://www.epa.gov/compliance/nepa/eisdata.html>. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

Public Comments

You may submit your comments and materials concerning the notice by the methods listed in ADDRESSES.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as documents associated with the notice, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R3-ES-2015-0033, or by appointment, during normal business hours, at the Service's Midwest Regional Office in Bloomington, Minnesota. You may obtain copies of the documents on the Internet at: <http://www.midwestwindenergyhcpeis.org>, or from the Midwest Regional Office.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 et seq.) and it's implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 et seq.) and it's implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: March 16, 2016

Lynn M. Lewis

Assistant Regional Director

Ecological Services

Midwest Region

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